



CONNECTICUT DEPARTMENT OF **CONSUMER PROTECTION**

JONATHAN A. HARRIS | COMMISSIONER

Testimony of Jonathan A. Harris Commissioner of Consumer Protection

General Law Committee Public Hearing, February 21, 2017

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H.B. 7078 “AN ACT REQUIRING THE MAINTENANCE OF ELECTRONIC LISTS OF FUNERAL SERVICE CONTRACTS”

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Senator Leone, Senator Witkos, Representative Baram, Representative Smith and Honorable Members of the General Law Committee, thank you for the opportunity to offer testimony in support of many of the bills on your agenda for today's public hearing.

I am Jonathan Harris, Commissioner of the Department of Consumer Protection. I am joined today by Deputy Commissioner Michelle Seagull and our Drug Control Director Rodrick Marriott.

S.B. 822 "AN ACT CONCERNING CONSUMER CONTRACTS"

DCP receives thousands of consumer complaints every year, many of which are handled by our Legal Division where there is a designated working group of attorneys, an investigator and a paralegal who proactively handle arising issues concerning unfair trade practices. Several of the most common complaints identified by this group, known as the "Market Fairness Group," involve weight loss programs, dating services and contracts with senior citizens. This proposal seeks to strengthen our statutes to further protect Connecticut's consumers.

The first two sections of this bill would address complaints we receive surrounding consumer contracts with senior citizens. Section one of this bill would amend Chapter 741c, the Liquidated Damages Provisions in Consumer Contracts, to require that a consumer contract or consumer lease entered into by a consumer 60 years of age or older, automatically terminates upon the consumer's death, and any penalty provisions of the contract would also be deemed unenforceable. The Department has received complaints from senior citizens and family members of deceased seniors who unwittingly enter into long-term contracts for services such as emergency assistance or home security systems. The contract duration is, by design, often longer than the senior consumer will likely be able to benefit from the services (because of death or health reasons forcing them into alternative living situations). Further, the cancellation terms of the contract are ambiguous, extremely stringent, often require a buyout of the entire contract or some other large monetary penalty to terminate, and the entity refuses to accept the death of the consumer as sufficient for terminating the contract.

Section two of this proposal would expand the plain language requirements under C.G.S. § 42-152 to add a provision that any contract entered into by consumers 65 years or older would need to be in font size larger than 10 points, that the contract expressly allow consumers to receive notification by mail or email, whichever the consumer chooses, and that the right to cancellation is at least five days.

The Department has also received complaints surrounding promises or guarantees included in weight loss advertisements. While representations of weight loss are regulated by existing diet program statutes, C.G.S. § 42-280 *et seq.*, increasingly, advertisements are being placed by entities that fall outside the statutory definition of a diet company. The guarantees and promises made by these entities are often misleading, unsubstantiated, and encourage certain questionable weight loss regimes that are not scientifically verified as being effective. This bill would amend the statutes to cover advertisers other than “diet companies” from using “guaranteed” or “promised” weight loss in advertisements. Additionally, this proposal would require these companies to use scientific evidence to substantiate their guaranteed or promised weight loss.

Finally, this bill would address issues surrounding dating companies, known in our statutes as “social referral services.” While C.G.S. § 42-321 *et seq.* provides some regulation of these services, the statutes are primarily limited to the consumer’s cancellation rights of the contract, providing them with a three day right to cancellation and a refund. However, our Department and other states have seen an increase in consumer complaints regarding the nature of services provided by dating companies and our current statutory scheme does not offer any additional protections beyond the three day right to cancel. More specifically, there has been a rise in complaints regarding the quality of social referral services and there are many instances of social referrals services promising a certain number of dates or matches to a consumer in exchange for a large fee and then often failing to deliver on the promise within a reasonable time. Social referral services companies are charging thousands of dollars (sometimes up to \$20,000.00) and may provide only one date to a consumer over a period of five years. The prevalence of low quality, inadequate social referral services provided to consumers has been on the rise considerably in this State and nationwide. This statute, informed by laws in other states facing similar issues, would give the Commissioner the authority to establish a maximum

amount of fees that could be charged. It also limits the duration of a contract to ensure that dating services provide consumers with a set amount of referrals within a reasonable time period.. Finally, it permits cancellation of the contract and a pro-rata refund if the social referral service company does not provide the purchaser with the set number of social referrals within two consecutive months. These new provisions would provide additional protections to consumers not afforded in the current statutory scheme and ensure that consumers would be getting the services that they paid for in a reasonable amount of time for a reasonable fee.

S.B. 826 “AN ACT MAKING TECHNICAL CHANGES TO THE DEPARTMENT OF CONSUMER PROTECTION STATUTES”

This bill makes a number of technical changes to DCP’s statutes:

- Through a drafting error last year, the Liquor Control Commission was accidentally included in Public Act 16-185, the legislation that addressed the antitrust issues identified in the North Carolina Board of Dental Examiners v. Federal Trade Commission decision. Unlike the other boards and commissions that DCP oversees, the Liquor Control Commission is not composed of active market participants and in fact, all of the members are state employees. As a result, there is no threat of anticompetitive behavior.
- Because U.S. Postal services have changed over the years, the bill also allows the Department to receive certified mail instead of registered mail when mailing requirements exist in certain liquor statutes. This provides a simpler and less costly option for businesses that have notice obligations.
- The proposed legislation also clarifies that partnerships under the real estate brokerage license section (C.G.S. § 21-312) include limited liability partnerships, and that corporations and partnerships do not need licenses both for the firm and its principal owner, which is how the Department has always interpreted this section of the statutes.
- This proposal would also update C.G.S. § 21a-150f, which addresses the processing and packing of bottled water, to reference current federal code.

- The final section of this bill removes obsolete language from rent-to-own agreements. Currently, C.G.S. § 42-240 (4) defines a rent-to-own agreement with reference to a four month limitation. The four month provision no longer applies to these agreements and should be removed to eliminate any confusion.

S.B. 827 “AN ACT CONCERNING GUARANTEE FUNDS AND ACCOUNTS MAINTAINED AND USED BY THE DEPARTMENT OF CONSUMER PROTECTION”

DCP administers the Home Improvement Guaranty Fund, the New Home Construction Guaranty Fund, the Health Club Guaranty Fund, the Real Estate Guaranty Fund and the Privacy Protection Guaranty and Enforcement Account. When a consumer has a claim or a judgment against a registrant associated with one of one of these funds that is uncollectible, the Department makes the payment out of the relevant fund, and the registrant pays the fund back.

When the amount paid to the consumer is substantial, the Department makes monthly payment arrangements with the registrant until the fund is paid back. There are times when registrants fail to pay the fund back and, if they have another credential with the Department, let their registration that is associated with a judgment lapse and continue to work under the other credential. There are 434 registered Home Improvement Contractors (HICs) who also hold an occupational license. Under current law, DCP cannot revoke their occupational license when they fail to make regular payments to a guaranty fund they owe money to under the lapsed HIC registration. While our ultimate goal is to ensure the funds are paid back, we recognize that those holding credentials cannot earn the income necessary to pay a fund back if the Department pulls their credentials. The credential holder, however, is far more likely to make the agreed upon payments to the fund if they know that other credentials are in jeopardy. This bill would implicate all licenses and registrations of individuals and entities when failing to pay back a guaranty fund.

*S.B. 828 “AN ACT CONCERNING
DRUG WHOLESALERS, MANUFACTURERS AND DISTRIBUTORS”*

This proposal seeks to update state statutes to meet current prescription drug distribution practices and comply with federal law. As with most with most product distribution, the prescription drug distribution chain has evolved with changes in technology and specialization. Third party logistics providers (3PLs), virtual manufacturers and virtual wholesale distributors are now part of the distribution chain, but our statutes do not define these commonly utilized operations. Currently, DCP simply registers all of these operations as manufacturers and wholesaler without any recognition that they are an addition to the distribution chain.

The language in this proposed legislation adds definitions for 3PLs, virtual manufacturers and virtual wholesale distributors, which is now required by the Food and Drug Administration. Additionally, this bill categorizes oxygen and durable medical equipment to clarify the authority to accept prescriptions, thereby improving the ability to bill insurance companies and allow these products proper identification in the supply chain.

*S.B. 829 “AN ACT ALLOWING THE COMMISSION OF PHARMACY TO PLACE
CONDITIONS ON PHARMACY LICENSES, PERMITS AND REGISTRATIONS*

Drug compounding, a process where pharmacists use appropriate ingredients and various tools to create products to fit the unique needs of patients, has become a more common practice over the last two decades. The need to ensure that this practice is conducted in a highly controlled and sterile environment has been reinforced with increasing reports of severe illnesses and deaths caused by unsafe practices. In fact, in 2012, right here in New England, a steroid injectable product was distributed by the New England Compounding Center in Massachusetts which led to an outbreak of fungal meningitis that has been associated with over 60 deaths and 740 illnesses in 20 States.

The Drug Control Division at DCP has diligently worked to ensure facilities that compound in Connecticut are operating under highly controlled and sterile conditions. Some of these compounding operations exist within pharmacies that also conduct a variety of other pharmacy operations. When the Department needs to suspend compounding operations because of a threat to public health, under current the statute, the entire pharmacy must be shut down, even when the public’s health is not at risk with the other operations at the pharmacy. This

proposal would give the Department the discretion to allow for a pharmacy to continue performing their other operations while they work to address whatever issues there are with their compounding operation.

S.B. 830 “AN ACT CONCERNING THE DEFINITION OF SHEET METAL WORKER”

This bill would update the definition of Sheet Metal Work to bring it into line with current practice. Over the years, many of the systems that sheet metal workers construct, such as heating and cooling systems, have incorporated the use of new materials due to environmental requirements or safety issues. The current definition for this work only includes ferrous and nonferrous ductwork systems. This proposed language is based on a review of current practices as well as definitions from other states.

*H.B. 7075 “AN ACT CONCERNING
HOMEMAKER-COMPANION AGENCY SURETY BOND REQUIREMENTS”*

While C.G.S. § 20-672(a) requires homemaker-companion agencies to maintain surety bonds, the statute does not place an amount on the requirement. The Department often receives questions from applicants about the required amount. This bill would set the minimum required amount for surety bonds at \$10,000 and also clarify that the bond should include coverage of theft by employees. The \$10,000 amount was derived from a 2013 survey conducted by the Department. Most surety bonds for these agencies are at \$10,000 or higher, depending on guidance from the agency’s agent.

*H.B. 7076 “AN ACT CONCERNING THE DEPARTMENT OF CONSUMER PROTECTION
AND LAPSED LICENSES, PERMITS, CERTIFICATIONS AND REGISTRATIONS”*

DCP licenses or registers over 220 types of jobs and businesses, including home improvement contractors, electricians, plumbers, accountants, engineers and real estate agents.

While the statutes gives guidance on how to address the lapsed licenses, permits, certifications and registrations for many of these credentials, there are some instances where the statutes are silent about to handle a lapsed credential. This proposal would amend C.G.S. § 21a-4 to provide catchall language for any lapsed credential where the statutes are silent. It would allow for reinstatement of a credential that has lapsed for less than three years. The bill would require that all license and late fees be paid, but would allow the Department to waive any examination requirements where a credential requires testing.

Additionally, in order to conform with P.A.16-185, this bill makes minor, technical changes to C.G.S. § 21a-4(d) by replacing “board” with “Department.”

*H.B. 7077 “AN ACT CONCERNING
LIABILITY FOR THE CLEANUP AND DISPOSAL OF ADULTERATED FOOD”*

Under C.G.S. § 21a-101, DCP is responsible for determining when food is adulterated. There are situations that arise, usually when food is being transported, in which the liability for costs of clean-up and disposal of food deemed adulterated by the Department is questioned. This proposal seeks to clarify that the entity responsible for the production, storage or transportation of the food is financially responsible for the clean-up and disposal of the food, rather than the State.

**H.B. 7078 “AN ACT CONCERNING THE DEPARTMENT OF CONSUMER PROTECTION
AND STERILE COMPOUNDING IN INSTITUTIONAL PHARMACIES”**

Institutional pharmacies, which exist within care-giving institutions, such as hospitals, and correctional facilities, are also regulated by the Drug Control Division at DCP. Some of these entities also have sterile compounding operations. Currently, the definition of sterile compounding in C.G.S. § 20-633b (2) does not include institutional pharmacies, even though C.G.S. § 20-571 clearly gives DCP jurisdiction over these pharmacies. To clarify this discrepancy, this bill adds institutional pharmacy to the sterile compounding definition.

H.B. 7078 “AN ACT REQUIRING THE MAINTENANCE OF ELECTRONIC LISTS OF FUNERAL SERVICE CONTRACTS

Currently, C.G.S. § 42-200 (d) requires that funeral homes maintain lists of escrow accounts for all funeral service contracts entered into or assigned to the establishment. The lists must include certain information, including the names and addresses of the purchasers of the contracts, and the amounts of deposits made into the accounts. While some establishments maintain this information electronically, others do not. When DCP investigates a complaint about a funeral service contract, it takes significantly more time and resources to deal with a dispute when the records are not electronic. This proposal would require that the information, which the State already requires these entities maintain, be maintained in an electronically readable format. The bill also requires that deposit dates and overall contract values be recorded. This proposed legislation would enable the Department to conduct investigations in a more timely and efficient manner, thusly freeing up time for other important investigatory work.

That concludes our testimony. Thank you again for allowing us to provide information about these proposals. Please let me, or our Legislative Director, Leslie O’Brien, know if you have any questions.